



Senator Adam Kline

37TH LEGISLATIVE DISTRICT • MARCH 2005

Dear Constituents, Voters, Friends,

It's that time again. The shooting's over, the dust has settled, and we legislators are having another blissful session in Olympia. I love this job. I'm honored to be your Senator and it's a great joy to work with my two colleagues from the 37th District, Representative Eric Pettigrew and Representative Sharon Tomiko Santos. Here's a short list of the events that most affect the residents of Southeast Seattle, as seen by your most humble servant and political curmudgeon.

First, the lawyer stuff. Six years of chicken-hearted pandering to the No New Taxers have left us with a court system that is slowly following the other functions of state government into decrepitude. Justice is a core function of government, on which public confidence depends. It cannot be allowed to decay. With the new Democratic majority, I once again chair the Senate Judiciary Committee, just in time to hear from the Courts a sincere plea for adequate funding. Included in the proposed funding request for administration of the courts are two items dear to my heart which for many years have been neglected: Legal Services programs for low-income folks in civil cases, and the Public Defender services for those charged with crime, and who can't afford a lawyer. Additionally, there's a move afoot to overhaul our Sentencing Reform Act, and — how can I say this carefully — give judges greater discretion, and enable them to sentence criminals rationally.

Then there's health care. I don't need to be convinced of the social importance of a working health care system, and I start from the premise that we should make care more affordable to working people. It's an essential component of the safety net that we should provide for those who are temporarily at odds with our less than vibrant economy. But truth be told, the inner workings of the health care funding apparatus — Medicare, Medicaid, reimbursement rates, federal funding of children's health coverage, all the set-asides and accounting whatchamacallits — all that stuff makes my head spin and my eyes glaze over. So of course I'm now assigned to the Committee on Health and Long Term Care.

I'm learning what I can, as fast as I can, from folks who know this field. It's a crash course, but hey, I'm only 60.

Then there's the ever-contentious primary election. The two-party system is as American as apple pie, and so are third parties. The Legislature did the right thing last year, but our product was replaced by the "top two" form in an Initiative. I believe the current version is unconstitutional.

One last thing. As Grandma used to say, I want you should write to me. You make me a Senator, you send me 60 miles away, I spend four nights a week in this soggy little town away from my wife and dogs, so you should at least write to me. I'm at kline_ad@leg.wa.gov, or P.O. Box 40437, Olympia 98504-0437. You can call my district office at 206.625.0800 or my office in Olympia at 360.786.7688, or leave a message for me (or any legislator) on the Legislative Hotline at 1.800.562.6000.

One more last thing. I'll be sending out an electronic-newsletter every few weeks during the legislative session. (And probably afterward, too. Ranting doesn't stop when the session ends.) Don't worry: I won't send it to you unless you sign up for it. And if you get sick of hearing from me, you can unsubscribe any time at the same place you sign up. I won't mind. Really. Go to <http://www.sdc.wa.gov/kline.htm> and click on "Subscribe."

Your Most Humble Servant,


Adam Kline

Justice In Jeopardy

It took two years of discussions by the Court Funding Task Force to put this proposal into coherent form, but I think we got it right. With 60-some members representing judges from all levels of the court system, lawyers from all corners of the Bar, representatives of the cities and counties, the clerks, law enforcement, business, and citizens, we met roughly every two months to identify the major problems with our courts and discuss how best to correct them. With the encouragement of Chief Justice Alexander, who often attended in person, and with the help of researchers from the Administrative Office of the Courts, we studied court operations and found ways in which they could be made more efficient. Those ways that need legis-

lative authorization found their way into this proposal, and those that don't are being implemented now.

We found that the accumulated effects of low funding levels from state, county, and city sources — all of which have had their tax revenues cut and their budgets depleted during the past six years — have seriously threatened the quality of justice throughout Washington. Courts, the source of justice in disputes, and of accountability both civil and criminal, are a critical function of state government. In the most relevant criterion, the percentage of the court's funds that come from the state, we rank 50th of the 50 states. Yes, dead last — in back of those usual suspects, Mississippi and Alabama. The state currently pays less than 15% of the cost of the

court system as a whole. This essential function of government currently takes 0.3% of the state budget. (That doesn't include Legal Services and Public Defenders for the poor.)

Currently, counties provide the courthouse space and fund all of the personnel with the exception of half the salaries of the Superior Court judges. They pay 100% of the salaries of the District Court judges, their clerks, the local jail guards, prosecutors, and public defenders. In the best of times, most counties spent between two-thirds and three-quarters of their budgets on the courts and criminal justice. Those costs are not going down, but county revenues already have — most noticeably the property tax, the mainstay of county government under our tax structure.

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Senator Adam Kline Legislative Update

(Justice in Jeopardy – continued)

Since statehood in 1889, counties have operated largely on their shares of the property and sales taxes, but rural counties have little sales tax revenue, and depend more heavily on the property tax. Since the passage of I-747 in 2001, growth in the property tax is capped at 1% per year unless an expensive election is held to approve a higher percentage. Given the anti-tax fervor, county councilmembers aren't pressing for elections to approve higher percentages, so 1% is it. The rate of inflation these days is about 2.1% — meaning that measured in buying power, property tax revenues are *decreasing* at 1.1% per year.

The long and short of it is that court and criminal justice costs are eating up county revenues across the state — and Executive Sims' last two budget proposals here in King County reflect that. Given the \$9 million revenue shortfall in King County, extreme cuts were made in the county's District Court staff, while even more extreme cuts were made in other functions of the county, such as parks.

Costs are also partly to blame for the deepening crisis in funding criminal defense for those accused

of crime, but who can't afford a lawyer. This is constitutionally required, and yet each year we've been coming closer to the breaking point for our system of public defenders. At least King County *has* a system. The news this summer from Grant County showed more accurately the status of public defense elsewhere — private lawyers so overwhelmed by caseload pressure that they're effectively incompetent, their clients sometimes wrongly induced to plead guilty.

The various civil legal service programs, which have provided legal help for low-income people with consumer complaints, employment problems, and other non-criminal problems, have also been gradually disappearing, not merely for lack of funding, but because of bizarre regulations intended to hinder their effectiveness as advocates for the poor. As a former legal services lawyer, I'm well aware that fancy words about "justice for all" mean nothing when legal help is beyond the means of the vast majority of Americans victimized by corporate or governmental wrongdoing. Last year, the Chief Justice testified before the House Judiciary Committee, calling the current funding system "not

adequate, not stable, and seriously uneven across the state."

So what to do? In the Senate, my colleagues and I proposed legislation in January that will: (1) have the State provide a higher percentage of the courts' funding, and do so on a uniform basis; (2) use the money saved to the counties by this, along with funds from an increase in court filing fees, to create a Trial Court Improvement Account within the state treasury, to be used solely for the funding of trial courts; (3) set maximum caseload standards for public defenders, and require them to meet certain standards of competence; and (4) fund public defender and civil legal services organizations adequately and uniformly, within the judicial branch of state government.

What we won't do, I'm afraid, is solve the real problem: taxes. An increase in court filing fees alone would have to be astronomical to solve this crisis. Yet even with Democratic majorities, there isn't yet the will among my colleagues or the new governor to re-arrange our archaic tax structure to create a fairer, more stable, and more adequate source of revenues that would allow us to maintain this essential function of government *without* recurring crises.

Three Strikes, Revisited

It was an easy Initiative to pass. In 1993, the backers of I-593 promised a mighty blow against crime by treating "career criminals" as batters at the plate: three strikes, you're out. Commit three serious felonies, and you get life without parole. Well, it sounded good, as these simplistic arguments often do, but now we're dealing with the consequences. While some who struck out clearly deserved it, and are best separated from the rest of us for a long time, there are an increasing number of guys behind bars who look just like Your Humble Servant — those 60-ish, balding, grandfather-types with bifocals — and who are about as dangerous. Not to mention their tendency to higher medical costs.

At \$26,000 per average prisoner per year, the cost of incarceration is a significant burden on state taxpayers, and these older guys cost us a lot more than that. Studies have shown for years that ex-cons over the age of 45 seldom commit violent offenses. Still, many legislators' understandable desire to be seen as Tough on Crime has made my job a hard one: to convince them that holding these guys in prison is one heck of an expensive way to look Tough, and in fact does nothing whatever for public safety.

So far, my various bills to take one or two less serious offenses off the list of "strikes" has stirred debate, but



passed out of committee only once. This year, after some preliminary talks with prosecutors, I'll take a different tack. Let's impose a parole-style review of each Three-Striker after the first 20 years — I'd tried for 15, but the Republicans and prosecutors wouldn't budge. When a prisoner can show that if released he's no longer a danger to the community, and that he's had few infractions inside, and is sufficiently rehabilitated, he gets two years of close supervision on the

outside, and is then discharged. I'd let a judge make this decision, on a case-by-case basis, as justice requires. At this bill's hearing in the Judiciary Committee on February 8, the Prosecutors Association expressed its support of this approach, with some reservations on specific issues.

Will this fly? Will anything convince legislators to get "Smart on Crime" instead of "Tough on Crime?" Well, there's only one way to find out. As this newsletter goes to press, a vote is scheduled in the Judiciary Committee.

Somebody Please Sue Us

Last spring, I wrote a piece in these pages, detailing our new election law, and how some of my colleagues professed their great love for the old (and unconstitutional) "blanket" primary before voting to pass a version they knew was constitutional. Some of us just needed to get down on our knees and swear allegiance to whatever the public seems to want this week, no matter that we know that the

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Supreme Court has found it unconstitutional. It's baffling to me that elected leaders feel a need to follow, rather than lead. We even got the constitutional version to the Governor's desk wrapped, as it were, inside the unconstitutional one, which the Gov could then conveniently peel away by means of the line-item veto, leaving the better one intact, as we secretly intended. We got to

be good guys for passing the popular version, and better yet, we made the Gov look like a bad guy for vetoing it. I said I could have done without that little dance, but the result was a good one.

Well, guess what, folks — along came the advocates for the Louisiana-style “top two” primary — a version we had firmly discarded — and got it on the ballot, in the form of I-872. It won. It's now the law of our state. In every one of the 49 legislative districts, the 39 counties, the 200-some cities, and the state as a whole, it just about certifies and guarantees that nobody outside the two major parties will ever get elected to any office. That alone qualifies it for the scrap-heap, in my personal opinion but that's my *political* opinion, and I'm not prepared to call that alone a *constitutional* defect. Luckily, though, its authors ignored the constitutional rule that the federal court set down at the outset of the earlier litigation over the blanket primary: a primary is an internal election by which members of one party decide whom to send out to battle the Others. Any system that allows the Others to come into that room and cast a vote violates the party's constitutional right of free association. Yet that's exactly how the “top two” candidates are chosen.

So Somebody, please sue us and give the courts a chance to get rid of this abomination, because at this point we'll never get rid of it ourselves. Until we get back the Montana-style primary that the Legislature passed, we'll have no place at the table for those minor party folks who keep us Democrats and Republicans honest. But remember, we legislators have to get all moon-eyed about whatever version the voters liked this year, no matter how bad it smells, so don't look to us to do the deed.

Anyway, we have enough other problems with elections. There are no doubt those in the Legislature who will feel that extra-close elections ought to be outlawed. Much grumbling has been heard about King County's error in temporarily failing to screen 735 votes. This is an effort, I firmly believe, to make the Governor seem illegitimate for the next four years. Only at the margins of this debate does anyone point out other counties, some in eastern Washington, also corrected errors in canvassing, just as King County did — but no one protested.

A more realistic problem with our election system is the lack of uniformity in local voting systems. Each county chooses between punch-cards, paper ballots, and electronic voting. All these have their weaknesses, as the recent election showed us, but uniformity of method would allow recounts under uniform rules, favoring no greater inclusion in one county than in another. Just as importantly, those counties which choose the electronic method are under no mandate to choose hardware that leaves a verifiable paper trail. As a member of the Committee on Government Operations, I'll have ample opportunity to persuade my colleagues to require the counties to go to electronic voting, with hardware that leaves a verifiable trail. Further, given modern equipment, we'll be able to speed up the process of vote-counting, by requiring a certification within two weeks. We'll never eliminate human error, but at least we can minimize the appearance of unfairness that so worries reasonable people and animates partisan attacks these days.

Now, do you understand why I so love this job?

Health Care 101

As a legislator entering the field of health care for the first time, I feel suddenly that I'm on unfamiliar turf. This isn't the lawyer stuff I've known professionally for decades, or the growth management issues with which I'm familiar as an environmental activist, or the tax issues that get me charged up. The subjects of our discussions are complicated programs by which the state provides health coverage itself through the Basic Health Plan, mostly to low-income consumers; regulates private companies who provide health insurance to Medicaid patients and on the private market; and cooperates with the federal government in reimbursing the doctors, clinics, hospitals, and nursing homes who provide care to low-income and elderly patients; and much else I don't even know about yet. I'm in listening mode. There is much cause for caution on my part. These various insurance plans and regulatory laws are intended not merely to socialize risk



— the private insurance market does that well — but to extend the coverage to discrete populations (children of low-income families, low-income seniors) whose condition deserves some help from the larger community. Yes, there's a patchwork of coverages, privately and publically provided, each with its arcane regulatory scheme, and, it seems, each with its own dictionary of terms, abbreviations, and acronyms. I have faith that there's some sense to this patchwork, and my eyes are open to see the nonsense, too.

The problem that so far appears most prominent to me, in the sense that it causes so many other problems, is the steep inflation in medical costs. Medical inflation over the past ten years has been in the 10-12% range, about triple the general inflation rate. Health care premiums are up steeply, and employers are shifting more of these costs to workers, or worse, out-sourcing to other countries the middle-class white-collar jobs that have carried medical benefits. As a result of both medical cost inflation and our mindless “No New Taxes” mentality, the state has been gradually pulling back from its commitment to subsidizing our bare-bones health plan for low-income families. Just look at former Gov. Locke's 2005 budget proposal: it would have thrown 17,000 low-income adults off the Basic Health Plan.

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Senator
Adam Kline Legislative Update

Health Care 101 (continued)

What to do? My own understanding must be more complete before I speak with assurance, but there are some steps that appear to make sense. While I am still trying to get my mind around the root causes of medical cost inflation, and thus to understand a way to deal with them, I feel there are some symptoms we can address now.

First, the taxpayers should not be required to subsidize the skimpy health care plans of some major employers. Some businesses in labor-intense industries — notably a well-known national retail chain — have such low wages and spotty health coverage that their employees qualify for subsidies under the BHP, and often have to find care in hospital emergency rooms. The Health Care Responsibility Act (also known around here as “Pay or Play”) would require these employers to contribute to the account that funds the BHP, in inverse proportion to their own benefits cost. The more they pay in direct benefits to employees, the less they have to ante up for publicly-financed care.

Second, we should not balance the health care portion of the budget on the backs of kids whose families cannot afford coverage. In mid-January, Governor Gregoire took a couple of steps to help children maintain coverage. First, she will not implement the premium increases

originally scheduled for July. That will cost the state \$16 million, but will prevent a sudden massive decrease in the number of protected children. Secondly, she has ordered a streamlining of the cumbersome application process that has cut applications from eligible families. As a result, some 19,000 fewer children will lose Medicaid coverage. That is not a victory in any way, just a less drastic loss.



Thirdly, we need to give small business a way to buy into the BHP for their employees. This is the state-operated bare-bones insurance program which subsidizes a specific number of eligible low-income people on a sliding scale basis. We may do the same for small businesses who wish to have their employees covered in the state employees’ system, the Public Employees Benefit Board (PEBB). The current monthly BHP premium is \$200, the PEBB premium \$400 for wider coverage. Our Insurance Commissioner estimates

that these plans might enroll 88,000 employees not currently covered.

Fourth, we need to do something that Congress won’t — create a prescription drug buying consortium. It should include not only state institutions and public hospitals, but also small businesses, local governments, and even union-management health benefit trusts. Two sessions ago, we created a discount card program, but like the federal version it included confusing eligibility criteria, and further was so limited (ages 50 to 65 only, and with income less than 300% of poverty) that potential applicants found it frustrating.

These are hardly a grand unified plan to cure all our health care ills. I expect to encounter problems I haven’t yet considered, questions I don’t even know enough to ask. That’s where you come in. My course in Health Care 101 should not be taught by lobbyists alone.

I listen to enough of them, always keeping in mind the economic interests that motivate them. I’d rather listen to you. If you have some insight into some part of the health care world that you truly feel would better inform my decisions, please let me know. I can’t resolve individual consumer complaints, I won’t take positions on issues I don’t yet understand, and I may not agree with you on those I do. But I’m happy to be a 60-year-old student. All my contact information is in the letter on the front of this Newsletter. Talk to me!